



Billing Code: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2011-N254]

[FXES11120200000F2-112-FF02ENEH00]

Final Environmental Impact Statement and Record of Decision on Oncor Electric Delivery Company's Habitat Conservation Plan for 100 Texas Counties

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, make available the final environmental impact statement (EIS), and final record of decision under the National Environmental Policy Act of 1969 analyzing the impacts of the issuance of an incidental take permit for implementation of the final Oncor Electric Delivery LLC's Habitat Conservation Plan (HCP). Our decision is to issue a 30-year incidental take permit to Oncor for implementation of the preferred alternative (described below), which authorizes incidental take of animal species and

impacts to plant species listed under the Endangered Species Act of 1973, as amended. Oncor has agreed to implement avoidance, minimization, and mitigation measures to offset impacts to these species, as described in their HCP.

DATES: We will issue a final permit no sooner than 30 days after publication of this notice. Comments on the final EIS and HCP will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For where to review documents and submit comments, see **Reviewing Documents and Submitting Comments** in SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490-0057.

SUPPLEMENTARY INFORMATION: We, the Service, announce the availability of the final environmental impact statement (EIS) and record of decision (ROD), which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), as well as the final Oncor Electric Delivery LLC (Oncor) Habitat Conservation Plan (HCP) as submitted by the applicant. All alternatives have been described in detail, evaluated, and analyzed in our December 2011 final EIS and Oncor's HCP. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected Alternative 1, the proposed HCP. The proposed action is to issue Oncor an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) that authorizes incidental take of animal species and impacts to plant species. The term of the permit is 30 years (2012-2042), and it would include the following species that are endangered and threatened (also referred to as “covered species”):

Endangered:

Large-fruited sand-verbena (*Abronia macrocarpa*)
 Texas poppy-mallow (*Callirhoe scabriuscula*)
 Navasota ladies’-tresses (*Spiranthes parksii*)
 American burying beetle (*Nicrophorus americanus*)
 Houston toad (*Bufo houstonensis*)
 Whooping crane (*Grus americana*)
 Golden-cheeked warbler (*Dendroica chrysoparia*)
 Black-capped vireo (*Vireo atricapilla*)
 Red-cockaded woodpecker (*Picoides borealis*)

Threatened:

Pecos sunflower (*Helianthus paradoxus*)
 Louisiana black bear (*Ursus americanus luteolus*)

Take of listed plant species is not defined in the Act, although the Act does identify several prohibitions. However, because covered species in the Oncor HCP include both plants

and animals, in the following discussion we use the term “incidental take” when discussing impacts to covered plants, as well as actual incidental take of covered animals.

Oncor will implement avoidance, minimization, and mitigation measures to offset impacts to covered species according to their HCP. For all but the whooping crane, impacts will be mitigated through purchase of mitigation credits from a Service-approved conservation bank, purchasing high-quality habitat near the impact area, or if purchase of land is not a viable mitigation option (e.g., mitigation necessary to offset impacts does not generate sufficient funds to purchase a reasonable amount of land to support the conservation of the species), additional options will be explored with the Service as described in the HCP. Within 1 mile of confirmed or potentially suitable stopover habitat for the whooping crane, Oncor will (1) mark all new transmission lines with bird flight diverters, (2) place transmission or distribution lines underground, or (3) relocate or remove transmission or distribution lines. Additionally, existing transmission or distribution lines within 1 mile of confirmed or potentially suitable stopover habitat will also be marked with bird flight diverters, equal to the number of new lines constructed that require marking with bird flight diverters.

Background

Oncor applied to the Service for an ITP. As part of the permit application, Oncor developed the HCP to meet the requirements of an ITP. Our issuance of an ITP and implementation of the HCP allow Oncor to incidentally take the covered species during construction, operation, and maintenance of various facilities (e.g., electric transmission and distribution lines), as well as during emergency response work (covered activities). The

proposed plan area is 100 of Oncor's 102-county service area, excluding Travis and Williamson counties, where any impacts to listed species will be authorized under existing permits (see map 1-1 in the HCP). The proposed covered area includes any area within Oncor's service area where covered activities are expected to affect listed species during the 30-year ITP term.

The Secretary of the Interior has delegated to the Service the authority to approve or deny an ITP in accordance with the Act. To act on Oncor's permit application, we must determine that the HCP meets the issuance criteria specified in the Act and in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508).

On July 15, 2011, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the HCP and to evaluate alternatives, along with the draft HCP (76 FR 41808). We included public comments and responses associated with the draft EIS and draft HCP in the final EIS.

Purpose and Need

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the covered activities described above. We identified key issues and relevant factors through public scoping, working with other agencies and groups, and comments from the public. We received responses from three Federal agencies and one State agency. The National Park Service had no comment, the Environmental Protection Agency had “no objections” to

implementation of the preferred alternative, and the Federal Aviation Administration encouraged Oncor to coordinate with them on any projects that would affect navigable airspace (Federal Aviation Regulations Part 77). Texas Parks and Wildlife Department (TPWD) had more substantive comments, including requesting clarification regarding how mitigation would be implemented, a request to be included on any committees formed to determine mitigation strategies, the control of invasive species, covering additional rare species within the action area, and obtaining any necessary permits from TPWD for State-listed species. The Service believes these comments are addressed and reasonably accommodated in the final documents. No new significant issues arose following publication of the draft documents.

Alternatives

We considered three alternatives in the EIS.

Alternative 1 – Preferred Alternative: Our selected alternative is the proposed HCP with a 30-year term, and the preferred alternative (Alternative 1) as described in the final EIS, which provides for the issuance of an ITP to Oncor for incidental take of the covered species that is anticipated to occur as a result of covered activities. This alternative includes the implementation of measures to avoid, minimize, and mitigate (mitigation measures described above) impacts from the potential incidental take to the maximum extent practicable. This alternative also provides conservation measures for covered species and the mechanism for streamlined compliance with the Act.

No Action Alternative: Under the No-Action Alternative, the Service would not issue an incidental take permit for a programmatic HCP. Instead, Oncor would seek an individual section 10(a)(1)(B) incidental take permit, or coverage under a section 7 consultation where a Federal nexus (authorized by a Federal agency [e.g., section 404 permit under the Clean Water Act]) exists, on a project-by-project basis over the next 30 years if activities could result in incidental take of any federally listed species within the proposed permit area.

Alternative 2 (50-year permit duration): Under this alternative the permit duration would be 50 years, rather than 30. The covered activities, proposed permit area, and covered species would be the same as the preferred alternative. The avoidance and minimization discussed in the proposed HCP would be the same, but the additional 20-year duration would likely result in a greater amount of incidental take.

Decision

We intend to issue an ITP allowing Oncor to implement the preferred alternative (Alternative 1), as it is described in the final EIS. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP, including all terms and conditions governing the permit. Implementation of this decision requires adherence to all of the minimization and mitigation measures specified in the HCP, as well as monitoring and adaptive management measures.

Rationale for Decision

We have selected the preferred alternative (Alternative 1) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitat, the extent and effectiveness of avoidance, minimization, and mitigation measures, and social and economic considerations. We did not choose the No Action Alternative because, as compared with the preferred alternative, a project-by-project approach for complying with the Act would be more time-consuming and less efficient, and would result in piecemeal mitigation incapable of providing comprehensive or comparable net benefits to covered species. While Alternative 2 would result in a greater amount of mitigation, it was not chosen because of the uncertainties associated with planning and implementation over such an extended duration, 50 years, which would likely result in the need to modify or amend the permit, resulting in inefficiencies and limiting the effectiveness of the HCP.

In order to issue an ITP, we must ascertain that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the criteria summarized below:

- 1. The taking will be incidental.** We find that the take will be incidental to otherwise lawful activities, including the proposed construction, operation, and maintenance of various facilities (e.g., electric transmission and distribution lines), as well as emergency response work. The take of individuals of the covered species will be primarily due to the indirect impacts of habitat destruction and/or alteration.

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings. Oncor has committed to a wide variety of conservation measures and other strategies designed to avoid and minimize harm to the covered species, including monitoring and adaptive management, and will mitigate for any unavoidable loss through purchase of conservation credits and/or land acquisition. The mitigation will be commensurate with the actual level of take. In addition, Oncor has included provisions for changed circumstances that are reasonably foreseeable during the term of the permit. These strategies will ensure that impacts from the proposed taking are minimized and mitigated to the maximum extent practicable. Mitigation will be in place prior to occurrence of the take (i.e., construction through habitat).

3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided. Oncor has developed and will implement their HCP. Section 6 of the HCP describes avoidance and minimization measures, including conservation measures and best management practices that will be written into project descriptions and budgets. These are standard practices and expenses that Oncor funds on all of their existing projects. It also describes the mitigation Oncor has agreed to undertake for unavoidable impacts that will be provided prior to occurrence of anticipated take (i.e., construction through habitat).

The Service's no surprises assurances are discussed in the HCP and measures to address changed circumstances have been identified. Adaptive management will be used to direct changes to conservation, mitigation, or management measures and monitoring when needed. Unforeseen circumstances would be addressed through the Service's close

coordination with Oncor in the implementation of the HCP, and Oncor has committed to a coordination process to address such circumstances. We have, therefore, determined that Oncor's financial commitment and plan, along with their willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

If needed, Oncor will arrange for an unconditional irrevocable stand-by letter of credit to be issued to the Service in the amount of the expected mitigation cost, as calculated in Section 6 of the HCP that will be issued by a nationally recognized banking institution acceptable to the Service with an expiration date that extends through the expected completion date of the mitigation measures.

- 4. The taking will not appreciably reduce the likelihood of the survival and recovery of any listed species in the wild.** As the Federal action agency considering whether to issue an ITP to Oncor, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated January 5, 2012, concluded that issuance of the ITP will not jeopardize the continued existence of the covered species in the wild. No areas designated as critical habitat for the Houston toad or whooping crane are expected to be affected. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effect of the issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species or adverse modification of any designated critical habitat within the permit area.

5. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We have assisted Oncor in the development of the HCP. We commented on draft documents, participated in numerous meetings and conference calls, and worked closely with Oncor during every step of plan and document preparation, so that conservation of the covered species would be assured and recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (adaptive management) or impacts exceed estimates (changed circumstances). It is our position that no additional measures are required to implement the intent and purpose of the HCP to those detailed in the HCP and its associated ITP.

We have determined that the preferred alternative best balances the protection and management of habitat for covered species, while allowing and providing a streamlined process for compliance with the Act for continued construction, operation, and maintenance of electric facilities within Oncor's service area. Considerations used in this decision include whether (1) mitigation will benefit the covered species; (2) mitigation lands will be managed for the species in perpetuity; (3) other conservation measures will protect and enhance habitat; (4) mitigation measures for the covered species will fully offset anticipated impacts to the species and provide recovery opportunities; and (5) the HCP is consistent with the covered species' recovery plans.

A final permit decision will be made no sooner than 30 days after the publication of this notice of availability and completion of the record of decision.

Reviewing Documents and Submitting Comments

You may obtain copies of the final EIS, final ROD, and final HCP by going to <http://www.fws.gov/southwest/es/AustinTexas/>. Alternatively, you may obtain compact disks with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling (512) 490–0057; or faxing (512) 490–0974. A limited number of printed copies of the final EIS and final HCP are also available, by request, from Mr. Zerrenner. Copies of the final EIS and final HCP are also available for public inspection and review at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Written comments may be submitted to Mr. Adam Zerrenner (see above).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Date: December 28, 2011

David C. Mendias,

Acting Regional Director, Region 2,

Albuquerque, New Mexico

~~Final Oncor Electric Delivery LLC Habitat Conservation Plan, Final Environmental Impact Statement, and Record of Decision~~

[FR Doc. 2012-830 Filed 01/19/2012 at 8:45 am; Publication Date: 01/20/2012]